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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 OAKLAND DIVISION

19 IN RE CALIFORNIA BAIL BOND ANTITRUST  
20 LITIGATION

21 This Document Relates To:

22 ALL ACTIONS

23 Lead Case No. 19-cv-00717-JST

24 **RULE 26(f) REPORT**

1 Pursuant to the Court's August 20, 2020 order (ECF No. 130), the parties in the above-  
2 captioned action submit this Rule 26(f) Report.

3 **I. DISCLOSURES**

4 The parties will exchange Rule 26 disclosures on September 18, 2020.

5 **II. DISCOVERY**

6 **A. Plaintiffs' Statement**

7 On August 11, 2020, the Court lifted the stay of discovery, and directed the parties to meet  
8 and confer on dates to exchange Rule 26 disclosures. ECF No. 126. On August 18, 2018, the  
9 Court entered an order setting a deadline to hold a Rule 26(f) conference by September 4, 2020, a  
10 deadline to exchange Rule 26(a)(1) disclosures by September 18, 2020, and a deadline to file this  
11 Rule 26 report by September 18, 2020. ECF No. 130.

12 The parties held a global Rule 26(f) conference on September 2, 2020 to discuss the  
13 proposed case schedule, the proposed Protective Order, and the ESI protocol. The parties met  
14 again by telephone on September 15, 2020 to discuss the schedule and Protective Order.

15 Plaintiffs also held separate Rule 26(f) conferences with each of the Defendants to discuss  
16 the items in Rule 26(f) and the Northern District of California's ESI Checklist. The parties  
17 continue to meet and confer about the items in that checklist, including identification of  
18 custodians for each Defendant. To assist the parties in identifying appropriate custodians,  
19 Plaintiffs have requested that each Defendant produce organizational charts reflecting senior  
20 leadership and key employees.

21 Plaintiffs served their First Set of Requests for Production to All Defendants ("RFPs") on  
22 August 12, 2020. Plaintiffs agreed to provide Defendants until October 2, 2020 to respond to the  
23 RFPs.

24 Plaintiffs also served a subpoena on third-party SFAA on August 14, 2020. SFAA  
25 responded on September 3, 2020, and Plaintiffs are meeting and conferring with SFAA on the  
26 scope of production.

27 Consistent with the RFPs and subpoena served to date, Plaintiffs anticipate that discovery  
28 will include the following topics: bail bond transaction data; inter-competitor communications

1 regarding prices; internal competitive analyses and business plans; advertisements and other  
2 statements regarding the ability or purported inability to offer discounts or rebates; and contracts  
3 and communications between sureties and bail bond agents regarding prices and rebating  
4 practices.

5 Below, Defendants contend yet again that no discovery should take place until the Court  
6 rules on the pending motion to dismiss. This is exactly the question raised by Plaintiffs' Motion  
7 to Lift the Discovery Stay (ECF No. 95), and that the Court resolved in its order granting  
8 Plaintiffs' Motion (ECF No. 126). The Court found that "Defendants have not carried their heavy  
9 burden to show why discovery should continue to be denied." ECF No. 126 at 2. Here, as  
10 before, Defendants do not satisfy that "heavy burden", and there is no reason for the Court to  
11 reconsider and reverse its earlier decision.

12 Defendants' assertions below regarding "extreme burdens of discovery" are baseless and  
13 unsupported. There is no way for the parties to know what the discovery burdens will be before  
14 negotiating search terms, reviewing hit counts, and gathering other relevant data points. This is  
15 how discovery under the Federal Rules works. Fed. R. Civ. P. 26(b)(1) ("Parties may obtain  
16 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and  
17 proportional to the needs of the case, considering the importance of the issues at stake in the  
18 action, the amount in controversy, the parties' relative access to relevant information, the parties'  
19 resources, the importance of the discovery in resolving the issues, and whether the burden or  
20 expense of the proposed discovery outweighs its likely benefit."). Defendants' cannot short-  
21 circuit that process with nothing more than conclusory assertions. The parties should follow the  
22 normal course of discovery, and, if necessary, bring disputes to the Court via the procedure  
23 described in Paragraph J of the Court's Standing Order.

24 **B. Defendants' Statement on Discovery**

25 At the August 26, 2020 hearing on Defendants' Motion to Dismiss (the "Motion"), the  
26 Court requested that the parties submit proposals for (1) how discovery should proceed while the  
27 Motion is under submission; and (2) how discovery should proceed in the event that at least some  
28 Defendants are dismissed from the lawsuit a second time, potentially with prejudice. (8/26/2020

1 Tr. of Proceedings at 68:20-69:13.) As Defendants explained in their submission to the Court,  
2 that discovery should be partially stayed while the Motion is pending. Given the extreme burdens  
3 of discovery in this matter, it makes little sense to require Defendants to undertake an extremely  
4 expensive document review and production process if these efforts may be mooted by a  
5 subsequent dismissal. (ECF No. 137.) Defendants also proposed that the scope of discovery after  
6 the Court resolves the pending Motion should depend on how the Court rules and whether  
7 Plaintiffs are again granted leave to amend. (*Id.*)

8 At the same time, as Plaintiffs note above, Defendants have conducted various  
9 preliminary steps that will allow discovery to rapidly proceed with respect to any claims that may  
10 remain once the Court rules on the pending Motion. The parties are diligently conferring on a  
11 Protective Order, ESI Protocol, and other discovery matters applicable to individual Defendants.  
12 Defendants have also agreed to provide responses and objections to Plaintiffs' voluminous  
13 Requests for Production of Documents by October 2, 2020. By completing these steps while the  
14 Motion is pending discovery is advancing, the extreme cost and expense of unrestricted discovery  
15 should only be imposed once the pleadings are settled and it is clear who will remain in this  
16 matter. Defendants respectfully request that the Court endorse Defendants' submitted discovery  
17 proposal to this effect. (*See* ECF No. 137.)

### 18 **III. EVIDENCE PRESERVATION (ESI)**

19 Plaintiffs sent detailed preservation letters to all Defendants on January 29, 2019. The  
20 parties are meeting and conferring about an Electronically Stored Information ("ESI") Protocol  
21 and plan to submit it to the Court for approval shortly.

22 Should the parties encounter any issues with respect to preservation, they will raise them  
23 with the Court promptly.

### 24 **IV. PROTECTIVE ORDER**

25 Plaintiffs proposed the Northern District's Model Protective Order to Defendants on  
26 August 11, 2020. The parties are meeting and conferring about the Protective Order, and will  
27 submit their proposal to the Court shortly, along with a declaration identifying those areas where  
28 the proposal differs from the Model Protective Order, consistent with Section G of the Court's

1 Standing Order for All Civil Cases.

2 **V. EXPEDITED TRIAL PROCEDURE**

3 The parties do not believe that this case is appropriate for an expedited schedule.

4 **VI. PROPOSED SCHEDULE**

5 If discovery remains open, the parties propose the following schedule. The parties  
6 acknowledge that this schedule will need to be revised if the Court accepts Defendants' proposal  
7 regarding discovery. *See* Defendants' Discovery Statement, ECF No. 137; Plaintiffs' Discovery  
8 Statement, ECF No. 138.

9

Deadline	Date
Deadline to Serve Rule 26 Disclosures	September 18, 2020
Deadline for Defendants to Serve Objections and Responses to Plaintiffs' First Set of RFPs	October 2, 2020
Substantial Completion of Document Production	April 16, 2021
Deadline to Produce Privilege Logs	June 11, 2021
Deadline to Amend Pleadings	August 11, 2021
Plaintiffs' Motion for Class Certification, and Designation of Experts and Disclosure of Opening Expert Reports	November 19, 2021
Defendants' Opposition to Motion for Class Certification, and Designation of Rebuttal Experts and Disclosure of Rebuttal Expert Reports	February 17, 2022

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Deadline	Date
Plaintiffs' Reply Brief ISO Class Certification, and Disclosure of Reply Expert Reports	April 15, 2022
Hearing on Class Certification	At the Court's convenience
Last Day of Fact Discovery	60 days following the Court's order on Class Certification (understanding that this does not mean discovery has been sequenced or bifurcated between class certification and the merits)

## **VII. FURTHER CASE MANAGEMENT CONFERENCE**

### **A. Plaintiffs' Proposal**

Plaintiffs suggest that the Court apply its standard practice in class cases and hold frequent and regular case management conferences. *See, e.g., In re Wells Fargo & Co. Shareholder Derivative Litig.*, Case No. 16-cv-5541-JST (N.D. Cal.), July 18, 2018 CMC Tr. at 8:11-16 ("I usually do class actions a certain way when I'm managing them and that is, that I see them much more frequently, and they report to me at a much more granular level about discovery planning and things like that just to make sure that it all gets done, and that there aren't surprises. And also, so that I can help people in an informal way."). Plaintiffs propose that these conferences occur every month.

Parties tend to be much more reasonable when a case management conference is on the horizon. Regular case management conferences encourage efficient progress of the action, and provide the parties with an incentive to resolve disputes among each other as best they can, and where agreement cannot be reached, to provide reasonable proposals and obtain guidance from the Court.

### **B. Defendants' Proposal**

Defendants believe that the monthly case management conferences proposed by Plaintiffs

1 are not necessary and would not be an efficient use of the parties or the Court's resources,  
2 especially while the Motion to Dismiss is still pending. The parties have thus far worked  
3 diligently and effectively on a variety of case management issues and favor the process the Court  
4 has thus far employed to resolve any potential disagreements. Additionally, given the difficulties  
5 of coordinating between 29 distinct Defendants in this action, each and every joint submission to  
6 the court, hearing, or conference imposes a significant logistical burden; scheduling monthly  
7 status conferences with no particular dispute or need for them will heighten these costs without  
8 any offsetting benefits. Defendants submit that the Court should set case management  
9 conferences at its discretion and that the parties should be encouraged to jointly request case  
10 management conferences at key stages of the litigation.

11  
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**ATTESTATION**

I, Dean M. Harvey , in compliance with Local Rule 5-1(i)(3), hereby attest that I obtained  
the concurrence of all of the above-listed counsel in filing this document.

DATED: September 18, 2020

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